

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIVISION COLUMBUS

ULICO CASUALTY COMPANY
1625 Eye Street NW
Washington, DC 20005 ,

Plaintiff,

v.

KEYBANK NATIONAL ASSOCIATION
127 Public Square
Cleveland, Ohio 44114

and

VICTORY CAPITAL MANAGEMENT, INC.
c/o Csc-Lawyers Incorporating Service,
statutory agent
50 West Broad Street, Suite 1800
Columbus, Ohio 43215

and

JAMES THOMPSON
88 East Broad Street
Columbus, Ohio 43215,

Defendants.

CASE NO.

C 205 791

JUDGE

JUDGE WATSON

MAGISTRATE JUDGE KEMP

NOTICE OF REMOVAL

For their Notice of Removal of this action to the United States District Court for the Southern District of Ohio, Eastern Division, from the Court of Common Pleas of Franklin County, Ohio, Defendants KeyBank National Association, Victory Capital Management, Inc. and James Thompson ("Defendants") state as follows:

1. Defendants are named defendants in a civil action filed in, and presently pending before, the Court of Common Pleas of Franklin County, Ohio, styled as *Ulico Casualty Company v. KeyBank National Association, Victory Capital Management, Inc. and James Thompson*, case number 05CVH 07 7799 (hereinafter referred to as the "State Court Action").

2. Defendant KeyBank National Association is a national bank, OCC chartered, with its headquarters in Cleveland, Ohio.

3. Defendant Victory Capital Management Inc. is a New York corporation and a wholly owned subsidiary of KeyBank National Association.

4. Defendant James Thompson is an employee of Defendant Victory Capital Management Inc., working in Columbus, Ohio.

5. Defendants received service of the Summons and a copy of the Plaintiff's Complaint in the State Action on or about July 28, 2005. This service constituted the first notice of the State Court Action served upon any of the Defendants by service of process setting forth the claims for relief upon which the State Court Action is based. A true copy of the Summons and Complaint received by Defendants are attached hereto as Exhibit 1. These constitute all process, pleadings and orders served upon the Defendants in the State Court Action.

6. This Notice of Removal is being filed within thirty (30) days of the first date on which Defendants received, through service or otherwise, a copy of a Summons, Complaint or any other document from which it could be determined that this case could be removed.

7. Defendants will simultaneously file a *Notice of Filing Petition for Removal*, attaching a copy of this Notice of Removal, with the Clerk of the Court of Common Pleas, Franklin County, Ohio, as required by 28 U.S.C. § 1446(d). A true copy of said Notice (without exhibits) is attached hereto as Exhibit 2.

8. Plaintiff's Complaint asserts a civil action for breach of duties owed to the Sheet Metal Workers Local 98 Pension Fund ("Pension Plan") that arises under and is pre-empted by ERISA, specifically 29 U.S.C. § 1132(a)(2). *Smith v. Provident Bank*, 170 F.3d 609, 614 (6th Cir. 1999) ("[S]tate-law fiduciary duty claim is not only preempted but also provides federal subject-matter jurisdiction.").

9. Plaintiff pursues subrogation rights for payment by Plaintiff under a Trustee and Fiduciary Liability Insurance Policy, policy number FLP-1803066, to the Pension Plan, relating to claims of

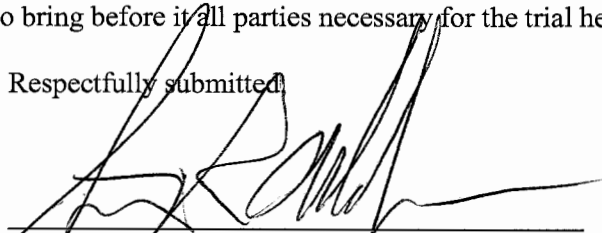
breaches of the ordinary and fiduciary duties owed by the Defendants to the Pension Plan under the ERISA Custodial Account Agreement dated February 2, 1996 ("Agreement"). A true copy of the Agreement is attached hereto as Exhibit 3.

10. Pursuant to 28 U.S.C. § 1331 and § 1441, this action involves a dispute or controversy properly within the jurisdiction of the United States District Court for the Southern District of Ohio, by reason of federal question jurisdiction.

11. Written notice of the filing of this Notice of Removal is being served this day on plaintiff's counsel.

WHEREFORE, Defendants pray that the State Court Action be removed from the Court of Common Pleas of Franklin County, Ohio to the United States District Court for the Southern District of Ohio, Eastern Division, and that the District court assume jurisdiction over this action and issue such further orders and process as may be necessary to bring before it all parties necessary for the trial hereof.

Respectfully submitted,



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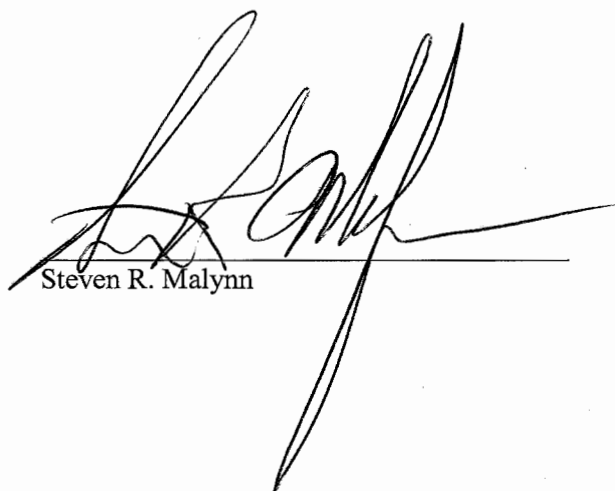
***Attorneys for Defendants KeyBank National
Association, Victory Capital Management, Inc.,
and James Thompson***

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Removal has been served by regular U.S. mail this 19th day of August, 2005, upon the following:

Glen R. Pritchard
Clark, Perdue, Roberts, Scot
471 East Broad Street, Suite 1400
Columbus, Ohio 43215-0000

Attorney for Plaintiff



Steven R. Malynn